

**SENATE, No. 3178**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED NOVEMBER 12, 2020

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Establishes New Jersey Pandemic Risk Reinsurance Program.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/9/2021)**

1 AN ACT concerning business interruption insurance coverage under  
2 certain circumstances and supplementing Title 17 of the Revised  
3 Statutes.

4

5 BE IT ENACTED *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7

8 1. As used in this act:

9 “Business interruption insurance” means commercial lines of  
10 property and casualty insurance coverage provided or made  
11 available for losses resulting from periods of suspended business  
12 operations, whether provided under broader coverage for property  
13 losses or separately.

14 “Commissioner” means the Commissioner of Banking and  
15 Insurance.

16 “Covered public health emergency” means any outbreak of  
17 infectious disease or pandemic for which an emergency is declared:

18 (1) by the Governor during a state of emergency declared  
19 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or a public  
20 health emergency declared pursuant to P.L.2005, c.222 (C.26:13-1  
21 et seq.);

22 (2) under the federal Public Health Service Act; or

23 (3) by the President of the United States as a public health  
24 emergency or major disaster under the Robert T. Stafford Disaster  
25 Relief and Emergency Assistance Act.

26 “Department” means the Department of Banking and Insurance.

27 “Eligible employee” means a full-time employee who works a  
28 normal work week of 25 or more hours.

29 “Eligible insurer” means an entity or affiliate that:

30 (1) issues policies insuring against loss or damage to property  
31 that include the loss of use and occupancy and business interruption  
32 in this State;

33 (2) is a recipient of direct earned premiums for any type of  
34 commercial property and casualty insurance coverage;

35 (3) is licensed or admitted to provide insurance in New Jersey;

36 and

37 (4) meets any other criteria as determined by the commissioner.

38 “Fund” means the New Jersey Pandemic Risk Reinsurance Fund  
39 created pursuant to section 4 of this act.

40 “Insurer deductible” means the value of the insurer’s direct  
41 earned premiums during the immediately preceding calendar year,  
42 multiplied by 5%.

43 “Property and casualty insurance” means commercial lines of  
44 property and casualty insurance, including excess insurance,  
45 workers’ compensation insurance, and directors and officers  
46 liability insurance. “Property and casualty insurance” does not  
47 include:

48 (1) private mortgage insurance or title insurance;

- 1 (2) medical malpractice or other professional liability insurance;
- 2 (3) life or health insurance; or
- 3 (4) flood insurance provided under the National Flood Insurance
- 4 Act.

5  
6 2. The commissioner shall establish the New Jersey Pandemic  
7 Risk Reinsurance Program pursuant to the following guidelines:

8 a. No compensation shall be paid from the program unless the  
9 aggregate industry losses in New Jersey resulting from a covered  
10 public health emergency exceed \$75 million.

11 b. Subject to the availability of funds, the aggregate annual  
12 maximum amount paid out of the program shall not exceed \$500  
13 million.

14 c. Losses in excess of the insurer deductible but not exceeding  
15 the aggregate annual maximum amount pursuant to subsection b. of  
16 this section shall be covered jointly by the program and  
17 participating eligible insurers subject to each insurer's retention.

18 d. The program shall pay incurred losses on a pro rata basis,  
19 the methodology for which shall be determined by the  
20 commissioner within 240 days of the effective date of this act.

21 e. Reinsurance purchased by a participating eligible insurer  
22 through the private market shall not affect the calculation of the  
23 insurer's deductible or retention.

24  
25 3. a. As a condition of participating in the New Jersey  
26 Pandemic Risk Reinsurance Program established pursuant to this  
27 act, an eligible insurer shall offer to an insured or prospective  
28 insured with no more than 100 eligible employees in the State of  
29 New Jersey, a rider to the insurance policy which includes, as a  
30 covered peril under that policy, coverage for global virus  
31 transmission or pandemic, or both, pursuant to a covered public  
32 health emergency.

33 b. The Commissioner of Banking and Insurance shall, on an  
34 expedited basis, review and approve, as appropriate, any insurance  
35 policy rider submitted by an insurer and designed to provide the  
36 coverage offered pursuant to this section.

37  
38 4. a. There is created a special, non-lapsing fund in the  
39 Department of Banking and Insurance that shall be designated the  
40 "New Jersey Pandemic Risk Reinsurance Fund." The fund shall be  
41 maintained as a separate account and administered by the  
42 Commissioner of Banking and Insurance. The fund shall be used to  
43 establish and fund the New Jersey Pandemic Risk Reinsurance  
44 Program established pursuant to section 2 of this act.

45 b. The fund shall consist of:

46 (1) an amount the commissioner deems appropriate to fully fund  
47 the program, which shall not be less than \$50 million, appropriated  
48 annually out of the General Fund of the State;

1 (2) not less than \$50 million out of the amounts of federal  
2 government assistance provided to this State pursuant to  
3 "Coronavirus Aid, Relief, and Economic Security Act," Pub. Law  
4 116-136; and

5 (3) not less than \$50 million out of the amounts of additional  
6 federal government assistance that may become available to this  
7 State with regard to the coronavirus disease 2019 pandemic.

8 c. All interest earned on the moneys that have been deposited  
9 into the fund shall be retained in the fund and used for purposes  
10 consistent with the fund.

11 d. Moneys in the fund shall only be used for the purposes  
12 established in this act.

13  
14 5. Upon the enactment of any legislation to establish a Federal  
15 Pandemic Risk Reinsurance Program, or any similar program at the  
16 federal level, the commissioner shall gradually cease operation of  
17 the New Jersey Pandemic Risk Reinsurance Program established  
18 pursuant to this act.

19  
20 6. This act shall take effect immediately and shall apply to  
21 insurance policies issued or renewed beginning 90 days after the  
22 date of enactment.

23  
24  
25 STATEMENT

26  
27 This bill establishes the New Jersey Pandemic Risk Reinsurance  
28 Fund and the New Jersey Pandemic Risk Reinsurance Program  
29 (program) for eligible insurers offering business interruption  
30 insurance coverage pursuant to the bill when claims payable  
31 resulting from the covered public health emergency exceed \$75  
32 million Statewide.

33 Under the bill, the Commissioner of Banking and Insurance is to  
34 establish the New Jersey Pandemic Risk Reinsurance Program  
35 pursuant to the following guidelines:

36 a. No compensation is to be paid from the program unless the  
37 aggregate industry losses in New Jersey resulting from a covered  
38 public health emergency exceed \$75 million.

39 b. Subject to the availability of funds, the aggregate annual  
40 maximum amount paid out of the program is not to exceed \$500  
41 million.

42 c. Losses in excess of the insurer deductible but not exceeding  
43 the aggregate annual maximum amount pursuant to the provisions  
44 of the bill are to be covered jointly by the program and participating  
45 eligible insurers subject to each insurer's retention.

46 d. The program is to pay incurred losses on a pro rata basis, the  
47 methodology for which is to be determined by the commissioner  
48 within 240 days of the effective date of this act.

1       e. Reinsurance purchased by a participating eligible insurer  
2 through the private market is not to affect the calculation of the  
3 insurer's deductible or retention.

4       The bill provides that the New Jersey Pandemic Risk  
5 Reinsurance Fund is to consist of an annual appropriation out of the  
6 General Fund of the State of not less than \$50 million. In addition,  
7 the bill provides for not less than \$50 million to be allocated out of  
8 the amounts of federal government assistance provided to this State  
9 pursuant to "Coronavirus Aid, Relief, and Economic Security Act,"  
10 Pub. Law 116-136. Lastly, the bill provides that, out of the  
11 amounts of additional federal government assistance that may  
12 become available to this State with regard to the coronavirus  
13 disease 2019 pandemic, not less than \$50 million is to be allocated  
14 to the New Jersey Pandemic Risk Reinsurance Fund.

15       The bill provides that, as a condition of participating in the New  
16 Jersey Pandemic Risk Reinsurance Program established pursuant to  
17 this act, an eligible insurer is required to offer to an insured or  
18 prospective insured with no more than 100 eligible employees in the  
19 State of New Jersey, a rider to the insurance policy which includes,  
20 as a covered peril under that policy, coverage for global virus  
21 transmission or pandemic, or both, pursuant to a covered public  
22 health emergency.

23       The Commissioner of Banking and Insurance is to review and  
24 approve, as appropriate and on an expedited basis, any insurance  
25 policy rider submitted by an insurer and designed to provide the  
26 coverage offered pursuant to this section.